IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE
REVIEW PETIITON NO. 64 OF 2007
IN

WRIT PETITION NO. 2728 OF 1996

Subhash Eknath Salunkhe .... Petitioner

versus

Shikshan Prasarak Sanstha,
Karanje Peth, Satara & ors..... Respondent.

Shri Dilip Bodke for the petitioner.
Shri A.M.Joshi for the espondent.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH OCTOBER, 2007

P.C.;

1. Review Petition is admitted and taken up for hearing by consent of parties.

2. The applicant in Review Petition is respondent no.1 in W.P. No.2728/96. The Review Applicant is working as an Assistant Teacher in a school administered by the respondent no.1/society. He was being paid in the scale admissible to a teacher possessing S.S.C. D.Ed. qualification (hereinafter referred to as D.Ed. scale). As one Mrs. N.C.Patil came to be granted a higher pay scale admissible to a trained graduate teacher (B. Ed. scale), the Review Applicant filed an appeal before the Presiding

Officer, School Tribunal under section 9 of M.E.P.S.Act. The tribunal allowing the appeal, set aside the promotion granted to Mrs. N.C.Patil and further directed that the Review Applicant/Appellant before the tribunal be treated as a trained teacher with effect from 21-8-1992 and directed the society to pay the difference of salary till passing of the judgment, and to pay salary in the scale admissible to B.Ed teacher after the judgment of the tribunal. The said judgment and order passed by the School Tribunal dated 23-1-1996 came to be challenged by filing a Writ Petition in this court by the soiety bearing W.P.No. 2728/96.

3. When the matter came up for admission, this court by an order dated 8-7-1996 granted Rule and by way of an interim order, pending decision of the writ petition, directed that the respondent no.1/Review Applicant be paid salary in the scale admissible to a trained graduate teacher, which was being paid to the respondent no.2 in the Writ Petiiton. Thus, pursuant to the order dated 8-7-1996, I am informed by the learned advocate appearing for the respective parties, that the Review applicant was paid salary in the scale admissible to a trained graduate teacher till the petition came to be finally decided by a judgment delivered on 12-1-2007. By the said judgment, the

order passed by the school tribunal has been quashed and set aside on the ground that the appeal filed by the present Review applicant was misconceived. It is categorically held in the said judgment that only an employee who is superseded by the management while making appointment to any post by promotion can only file an appeal. I concluded in the said judgment that on account of denial of higher pay scale, no appeal lies under section 9 and thus the tribunal's judgment has been found to be without jurisdiction. It is this judgment dated 12-1-2007 of which review is sought by filing this review application.

4. The learned advocate Shri C.H. Gangal was appearing for the respondent no.1 in the writ petition and had also filed his power, but some how by mistake the name of the counsel did not appear in the cause list published by the Bar Association. Hence the advocate could not and did not appear when the matter was taken up for final hearing. The learned counsel for the society does not dispute the factual position and does not oppose the review petition. A limited greivance is made by the learned counsel for the review applicant and the same is to the effect that under the orders passed by this court daed 8-7-1996 the respondent no.1 in writ petition/review applicant was paid salary in the scale admissible to a trained

graduate teacher till the date of decision of the writ petition and thus it is contended that the society should not recover the said amount, which has been paid to the review petitioner. The learned counsel appearing for the society on instructions from his client makes a statement that the society will not make any recovery of the amount of salary paid to the review petiitoner, in the scale admissible to a trained graduate teacher with effect from 8-7-1996 till the date of judgment. No other objection is raised to the judgment rendered in the writ petition dated 12-1-2007. Hence on concession made available by the counsel for the society, the judgment dated 12-1-2007 passed in W.P.No. 2728/96 is modified to the following extent.

> Though the order passed by the school tribunal is quashed and set aside, the society/respondent no.1 in this application (petitioner in writ petition) shall not recover the amount of salary or any part thereof,which has been paid to the review petitioner pursuant to the interim order dated 8-7-1996 till the decision of the Writ Petition.

6. This modification be carried out in the judgment

by inserting the same before the last sentence in the judgment which reads thus:

> "Rule is made absolute in the above terms with no orders as to costs."

Review Petition is accordingly partly allowed and disposed of.

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